

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218920

DATE: April 2, 1986

MATTER OF: Joseph E. McGuire

DIGEST:

1. Federal employees who forfeit annual leave because of maximum annual leave carryover limitations are entitled to restoration of annual leave which was properly scheduled to be taken but cancelled as a result of public exigency, and also restoration of leave lost as the result of administrative error. When unauthorized officials cancel leave based on their personal determination that this is required by public exigency, the affected employees become eligible on grounds of administrative error for restoration of the number of hours of annual leave improperly cancelled. An employee whose immediate supervisor without proper authorization cancelled his scheduled annual leave for reasons of public exigency is consequently eligible for restoration of the number of hours improperly cancelled.
2. Under federal regulations, restored annual leave must generally be used by the end of the leave year ending 2 years after the date the agency restores leave to an employee. An employee entitled to restoration of leave forfeited in 1984 is therefore eligible to use it during the period lasting until the end of the leave year ending 2 years after the date on which the agency actually restores the leave to him, even though because of administrative delays in the matter the leave was not restored for more than 2 years after it was originally forfeited.

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An administrative law judge employed by the U.S. Department of the Interior, Office of Hearings and Appeals, Mr. Joseph E. McGuire, requests restoration of annual leave forfeited in January 1984.^{1/} We find that 40 hours of scheduled leave which were improperly cancelled by his immediate supervisor may be restored to him on grounds of administrative error.

Background

The statutes governing the leave entitlements of federal employees provide that an employee who is stationed in the United States may accumulate and carry into a succeeding leave year a maximum of 30 days, or 240 hours, of annual leave. 5 U.S.C. § 6304(a). Provision is made, however, for the restoration of leave lost by this limitation if the loss resulted from "exigencies of the public business when the annual leave was scheduled in advance" or from "administrative error." 5 U.S.C. § 6304(d).

On November 15, 1983, Mr. McGuire requested approval to take 104 hours of annual leave between November 19, 1983, and the end of the leave year on January 6, 1984. These 104 hours of annual leave were subject to forfeiture if not used by the end of the leave year because of the statutory 240-hour maximum leave carryover limitation. His immediate supervisor approved his request. Mr. McGuire later advised the supervisor that he believed he would be unable to take 98 of the 104 hours of scheduled annual leave because his workload was too great to permit such leave. His supervisor then cancelled 40 rather than 98 hours of the 104 hours of scheduled annual leave, based on considerations of Mr. McGuire's workload. Mr. McGuire therefore remained free to use 64 of the 104 hours of leave originally scheduled. Subsequently, Mr. McGuire forfeited 73 hours of annual leave at the end of the year, and he submitted an application for the restoration of 40 of those hours on the basis that they had been lost due to exigencies of public business.

^{1/} This request was submitted by Joseph E. Doddridge, Deputy Assistant Secretary, Policy, Budget and Administration, U.S. Department of the Interior.

The Department of the Interior's personnel office received Mr. McGuire's request for the restoration of 40 hours of annual leave lost due to public exigency on January 11, 1984. Personnel officials found the request "procedurally deficient" because his immediate supervisor decided upon the public exigency while federal regulations authorize only second-line supervisors to cancel leave based on a determination of public exigency. The personnel officials found, however, that the error occurred through no fault of Mr. McGuire, and suggested that the request be resubmitted as a request for restoration of leave forfeited due to administrative error. Mr. McGuire submitted such a request on April 16, 1984, seeking restoration of the total amount of leave he forfeited, 73 hours.

The Department of the Interior now asks whether any hours of annual leave should be restored to Mr. McGuire. The Department also questions the effect of the processing delays in this case on Mr. McGuire's eligibility to use any leave that may be restored to him.

Discussion

As indicated, annual leave which has been forfeited due to public exigency or administrative error may be restored to federal employees under 5 U.S.C. § 6304(d). Implementing regulations regarding forfeitures due to public exigency provide, in relevant part, as follows:

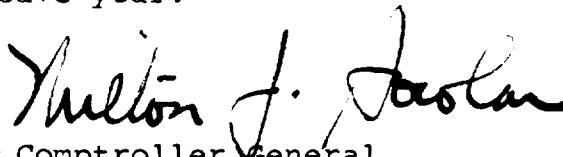
"* * * Except where made by the head of the agency, the determination [of public exigency] may not be made by any official in the immediate organizational unit affected by the exigency or by any official whose leave would be affected by the decision."
5 C.F.R. § 630.305.

We have held that cancellation of scheduled annual leave due to public exigency by an unauthorized agency official constitutes administrative error, thereby providing an independent ground for restoration of cancelled annual leave under 5 U.S.C. § 6304(d). See Nobert A. Shepanek, 58 Comp. Gen. 684 (1979); William D. Norsworthy, 57 Comp. Gen. 325 (1978) and Alan G. Bolton, Jr., B-200027, August 24, 1981.

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In the present case, we find that Mr. McGuire acted prudently in first scheduling the use of his annual leave which was subject to forfeiture, and then informing his supervisor of his personal belief that his workload should preclude his taking 98 hours of the scheduled leave. However, neither he nor his immediate supervisor was authorized to determine that any of his leave could be cancelled due to exigencies of public business. Mr. McGuire was thus ineligible for restoration of any leave lost due to purported public exigency, because no proper determination of public exigency was ever made. However, under the decisions cited above, he became eligible for restoration of the leave which was improperly cancelled due to administrative error. Because only 40 of the 104 hours of scheduled annual leave were actually cancelled, however, he is only entitled to restoration of those 40 hours of leave he was prevented from using. The additional hours of scheduled leave he lost because of his personal election not to use them are not subject to restoration.

Federal regulations provide that when annual leave is restored due to administrative error, it must be scheduled and used, "not later than the end of the leave year ending two years after (a) the date of restoration of the annual leave * * *." 5 C.F.R. § 630.306. Therefore, Mr. McGuire is entitled to use the 40 hours of annual leave until the end of the leave year in progress 2 years after the date of actual restoration. Assuming the agency will restore Mr. McGuire's 40 hours' annual leave during the current year, he will thus be eligible to use the restored leave until the end of the 1988 leave year.


Acting Comptroller General
of the United States